

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**VARSHAD DESAI AND
AMRISH PATEL
Plaintiffs,**

vs.

**STATE FARM LLOYDS
Defendant.**

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**CIVIL ACTION NO. _____
JURY REQUESTED**

DEFENDANT’S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant STATE FARM LLOYDS (hereinafter, “State Farm”) files this Notice of Removal of the present action from the Civil Court at Law No. 4 in Houston, Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division. In connection with this Notice of Removal, State Farm would respectfully show unto the Court as follows:

PROCEDURAL BACKGROUND

1. Plaintiffs Varshad Desai and Amrish Patel first filed this action on June 23, 2015 against “State Farm Lloyds, Inc.” in the Civil Court at Law No. 4 in Houston, Harris County, Texas. That case was docketed under Cause Number 1064068 (the “State Court Action”).

2. On July 29, 2015, Plaintiffs filed their First Amended Petition, adding “State Farm Lloyds” to suit. Thereafter, on August 4, 2015, Plaintiffs filed their Second Amended Petition, removing “State Farm Lloyds, Inc.” from suit. “State Farm Lloyds” is now the only named defendant in this case.

3. Thereafter, on August 7 2015, State Farm filed its Answer to Plaintiffs’ Second Amended Petition.

4. State Farm files this Notice of Removal pursuant to 28 U.S.C. §1446 to remove the State Court Action from the Civil Court at Law No. 4 in Houston, Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

5. Plaintiffs' Second Amended Petition filed in the State Court Action included a jury demand.

NATURE OF THE SUIT

6. This lawsuit involves a dispute over the non-payment of insurance benefits and the handling of Plaintiffs' commercial property/business claim for damages allegedly caused by a storm "[o]n or about May 25, 2015 and May 26, 2015." *See* Second Amended Petition at ¶¶ 5-8. Plaintiffs assert a claim for breach of contract. *Id.* at ¶¶ 9-10.

7. Plaintiffs reported their claim on or about May 28, 2015. State Farm timely acknowledged the claim and inspected the insured property. State Farm ultimately concluded that the damages were caused by flood/surface water (consistent with Plaintiffs' initial report of loss), which is not a covered cause of loss under the applicable policy. State Farm thereafter issued a letter to Plaintiffs denying the claim on that basis.

BASIS FOR REMOVAL

9. The Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is and was complete diversity between all real parties in interest and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

10. The citizenship of an unincorporated association is determined by the citizenship of each member of the entity, not by the state where the entity is organized. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir.2008); *see also, e.g., See Royal Ins. Co. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882-83 (5th Cir. 1993) (citizenship of unincorporated

association determined by citizenship of members); *Griggs v. State Farm Lloyds*, 181 F.3d 694, 698 (5th Cir. 1999) (finding that State Farm Lloyds is a citizen of Illinois); *Alonzo v. State Farm Lloyds*, No. SA-06-SA-0326-XR, 2006 WL 1677767, at *1 (W.D. Tex. June 12, 2006) (State Farm Lloyds held to be diverse from Texas plaintiffs); *Caballero v. State Farm Lloyds*, No. CA-C-03-266, 2003 WL 23109217, at *1 (S.D. Tex. Oct. 31, 2003) (same); *Rappaport v. State Farm Lloyds*, No. 3:97-CV-2747, 1998 WL 249211, at *2 (N.D. Tex. May 8, 1998) (same).

11. State Farm Lloyds is an association of individual underwriters authorized to conduct business in Texas as a Lloyd's plan insurer as defined and set out in Chapter 941 of the Texas Insurance Code. At the time this action commenced, State Farm was, and still is, an unincorporated insurance association whose underwriters were, and still are, citizens of states other than Texas. Accordingly, State Farm is not a citizen of the State of Texas. *See* Verification below.

12. Plaintiffs' Second Amended Petition expressly alleges damages in excess of \$100,000 satisfying the "amount in controversy" requirement of 28 U.S.C. § 1332(a). *See* Second Amended Petition at ¶ 1.

13. Plaintiffs filed this action in Harris County, Texas. The Houston Division of the Southern District of Texas encompasses Harris County, Texas. *See* 28 U.S.C. § 124(b)(2). Thus, venue is proper because this district and division embrace the place where the state court action is pending. *See* 28 U.S.C. § 1441(a).

14. All information and documents required by 28 U.S.C. § 1446(a) and by Local Rule 81 to be filed with this Notice of Removal are attached and indexed in Exhibit A.

15. A copy of this Notice of Removal will be filed with the Harris County District Clerk's office and served on the Plaintiffs promptly. *See* 28 U.S.C. § 1446(d).

PRAYER

State Farm respectfully requests that the above-styled action now pending in the Civil Court at Law No. 4 in Houston, Harris County, Texas be removed to this Honorable Court pursuant to the Court's diversity jurisdiction. State Farm further prays that upon final trial, judgment be rendered such that Plaintiffs take nothing by their suit against State Farm. State Farm additionally asks for such other and further relief to which it may be justly entitled.

Respectfully submitted,

GERMER PLLC

By: 
Dale M. "Rett" Holiday
State Bar No. 00792937
Federal I.D. No. 21382
Three Allen Center
333 Clay Street
Houston, Texas 77002
Telephone: (713) 650-1313
Facsimile: (713) 739-7420
Email: rholidy@germer.com

ATTORNEY-IN-CHARGE FOR DEFENDANT

OF COUNSEL:

GERMER PLLC

Gregory M. Howard
State Bar No. 24042989
Federal I.D. No. 619850
Three Allen Center
333 Clay Street, Suite 4950
Houston, Texas 77002
Telephone: (713) 650-1313
Facsimile: (713) 739-7420
Email: ghoward@germer.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been duly sent via CM/ECF on August 24, 2015 to all counsel of record, as follows:

John D. Sheppard
jsheppard@morrowsheppard.com
Nicholas A. Morrow
nmorrow@morrowsheppard.com
MORROW & SHEPPARD LLP
3701 Kirby, Suite 840
Houston, Texas 77098

VIA FAX AND CM/RRR



Dale M. "Rett" Holiday

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

VARSHAD DESAI and
AMRISH PATEL
Plaintiffs,

vs.

STATE FARM LLOYDS
Defendant.

§
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CIVIL ACTION NO. _____
JURY REQUESTED

VERIFICATION

THE STATE OF ILLINOIS

§
§
§

COUNTY OF McLEAN

BEFORE ME, the undersigned authority, on this day personally appeared Jim Larson, who, being first duly sworn by me, did depose and state as follows:

"My name is Jim Larson. I am over the age of eighteen (18) years and fully competent to make this verification.

I am an Assistant Secretary – Treasurer of State Farm Lloyds, Inc. ("Lloyds, Inc."), an attorney-in-fact for State Farm Lloyds. I am also an Assistant Vice President – Accounting of State Farm Mutual Automobile Insurance Company ("State Farm Mutual"). As part of my job duties for State Farm Mutual, I oversee a department that prepares and files the Annual Statements and similar filings for State Farm Mutual and each of its property and casualty insurance subsidiaries and affiliates, including State Farm Lloyds. As an officer of these State Farm companies, I have knowledge of their respective directors, principal officers or underwriters, the type of entity each is, and other similar information.

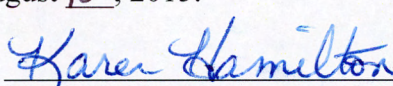
I have read paragraph 11 of Defendant State Farm Lloyds's Notice of Removal and declare that all the facts contained therein are true and correct."



Jim Larson

SWORN AND SUBSCRIBED TO before me on August 18th, 2015.





Notary Public in and for the
State of Illinois

EXHIBIT A

LIST OF ATTORNEYS/PARTIES

1. John D. Sheppard
Nicholas A. Morrow
MORROW & SHEPPARD LLP
3701 Kirby, Suite 840
Houston, Texas 77098
Telephone: (713) 489-1206
Facsimile: (713) 893-8370

Attorneys for Plaintiff

2. Dale M. "Rett" Holiday
Gregory M. Howard
GERMER PLLC
Three Allen Center
333 Clay Street
Houston, Texas 77002
Telephone: (713) 650-1313
Facsimile: (713) 739-7420

Attorneys for Defendant

**INDEX OF DOCUMENTS FILED
WITH REMOVAL ACTION**

VARSHAD DESAI AND AMRISH PATEL V. STATE FARM LLOYDS

- (a) Plaintiffs' Original Petition, Request for Disclosure and Jury Demand;
- (b) Citation on Defendant;
- (c) Plaintiffs' First Amended Petition, Request for Disclosure and Jury Demand;
- (c) Plaintiffs' Second Amended Petition, Request for Disclosure, and Jury Demand;
- (d) Defendant's Answer & Special Exceptions to Plaintiffs' Second Amended Petition; and
- (e) Docket/Case Summary Sheet.

COPYFILED
6/23/2015 4:20:16 PM
Stan Stanart
County Clerk
Harris CountyNO. 1064068

VARSHAD DESAI AND AMRISH PATEL §

Plaintiffs, §

v. §

STATE FARM LLOYDS, INC §

Defendant §

IN THE HARRIS COUNTY
CIVIL COURT OF LAW # 4**PLAINTIFF'S ORIGINAL PETITION,
REQUEST FOR DISCLOSURE, AND JURY DEMAND**

Plaintiffs files this Original Petition, Request for Disclosure, and Jury Demand against Defendant State Farm Lloyds, Inc., and would respectfully show the Court as follows:

I. JURISDICTION & VENUE

1. Venue and jurisdiction are proper in this Court because Defendant is a resident of Texas, because this cause of action involves a controversy within the jurisdictional limits of this Court, and because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas. Plaintiffs seek damages within the jurisdictional limits of this Court. Pursuant to Texas Rule of Civil Procedure Rule 47(c), Plaintiffs seek monetary relief of over \$100,000 and under \$200,000.

II. DISCOVERY LEVEL

2. Discovery may be conducted under Level 2 of the Texas Rules of Civil Procedure.

III. PARTIES

3. Plaintiffs are residents of Texas.

4. Defendant State Farm Lloyds, Inc. is a resident of Texas and may be served through its registered agent Corporation Service Company d/b/a CSC Lawyers Inc., 211 E. 7th Street, Suite 620, Austin, Texas 78701.

IV. FACTS

5. Plaintiffs are named insureds under an insurance policy issued by Defendant covering their property and business located at 3 Riverway Suite B1, Houston, Texas 77056, which is operated as a Murphy's Deli in the Galleria.

6. On or about May 25, 2015 and May 26, 2015, Plaintiffs' business and property suffered covered damage and losses covered by their insurance policy, and they filed a claim on their policy.

7. Defendant improperly denied the claim.

8. The adjuster assigned to the claim conducted a substandard investigation and inspection of the property and loss, and performed an outcome-oriented investigation of the claim, which resulted in a biased, unfair, and inequitable evaluation of Plaintiffs' losses and denial of Plaintiffs' claim.

V. CAUSE OF ACTION – BREACH OF CONTRACT

9. Each of the foregoing paragraphs are incorporated by reference herein.

10. Plaintiffs had a contract of insurance with Defendant. Defendant breached the terms of that contract by wrongfully denying the claim and Plaintiffs were proximately damaged thereby.

VI. CAUSE OF ACTION – PROMPT PAYMENT OF CLAIMS STATUTE

11. Each of the foregoing paragraphs are incorporated by reference herein.

12. The failure of Defendant to pay for the losses and/or follow the statutory guidelines for accepting or denying coverage constitutes a violation of Article 542.051 *et seq.* of the Texas Insurance Code.

13. Plaintiffs, therefore, in addition to Plaintiffs' claim for damages, are entitled to 18% interest and attorneys' fees as set forth in Article 542.060 of the Texas Insurance Code.

VII. CAUSE OF ACTION – BAD FAITH / DTPA

14. Each of the foregoing paragraphs are incorporated by reference herein.
15. Defendant is required to comply with Chapter 541 of the Texas Insurance Code.
16. Defendant violated Chapter 541.051 of the Texas Insurance Code by making statements misrepresenting the terms and/or benefits of the policy.
17. Defendant violated Chapter 541.060 by (1) misrepresenting to Plaintiffs a material fact or policy provision relating to coverage at issue; (2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability had become reasonably clear; (3) failing to promptly provide to Plaintiffs a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim; (4) failing within a reasonable time to affirm or deny coverage of a claim to Plaintiffs or submit a reservation of rights to Plaintiffs; (5) refusing to pay the claim without conducting a reasonable investigation with respect to the claim.
18. Defendant violated Chapter 541.061 by (1) making an untrue statement of material fact; (2) failing to state a material fact necessary to render other statements made not misleading considering the circumstances under which the statements were made; (3) making a statement in a matter that would mislead a reasonably prudent person to a false conclusion of material fact; (4) making a material misrepresentation of law; and (5) failing to disclose a matter required by law to be disclosed.
19. At all material times hereto, Plaintiffs were consumers who purchased insurance products and services from Defendant.
20. Defendant has violated the Texas Deceptive Trade Practices Act in the following respects: (1) Defendant represented that the agreement confers or involves rights, remedies, or

obligations which it does not have, or involve, or which are prohibited by law; (2) Defendant failed to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction that the consumer would not have entered into had the information been disclosed; (3) Defendant, by accepting insurance premiums but refusing without a reasonably basis to pay benefits due and owing, engaged in an unconscionable action or course of action as prohibited by the DTPA Section 17.50(a)(1)(3) in that Defendant took advantage of Plaintiffs' lack of knowledge, ability, experience, and capacity to a grossly unfair degree, that also resulted in a gross disparity between the consideration paid in the transaction and the value received, in violation of Chapter 541 of the Insurance Code.

21. Defendant knowingly committed the acts compliant of. As such, Plaintiffs are entitled to exemplary and/or treble damages pursuant to the DTPA and Texas Insurance Code Section 541.152(a)-(b).

VIII. ATTORNEYS FEES

22. Plaintiffs are entitled to reasonable and necessary attorneys fees pursuant to Texas Civil Practices and Remedies Code 38.001-38.003, and pursuant to Texas Insurance Code 541.152 and 542.060.

IX. CONDITIONS PRECEDENT

23. All conditions precedent have been performed or have occurred, or have been waived by Defendant.

X. REQUEST FOR DISCLOSURE

24. Plaintiffs request that Defendant timely disclose the information and materials required by Texas Rule of Civil Procedure 194.2(a)-(l).

XI. RESERVATION OF RIGHTS

25. These allegations are made acknowledging that this lawsuit is still in its early stages, and investigation, although undertaken, is continuing. As further investigation is conducted, additional facts will surely be uncovered that may and probably will necessitate further, additional, and/or different allegations.

XII. JURY DEMAND

26. Plaintiffs request a jury trial. Tex. R. Civ. P. 216(a).

XIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that Defendant be cited to appear and answer, and that on final trial hereof Plaintiffs have judgment against Defendant for (1) actual and compensatory damages, (2) punitive and exemplary damages, (3) prejudgment and postjudgment interest, (4) costs of suit, (5) attorneys fees, (6) such other and further relief to which Plaintiffs may be justly entitled at law and in equity.

MORROW & SHEPPARD LLP

/s/ John D. Sheppard

John D. Sheppard

State Bar No. 24051331

jsheppard@morrowsheppard.com

Nicholas A. Morrow

State Bar No. 24051088

nmorrow@morrowsheppard.com

3701 Kirby Dr, Ste 840

Houston, TX 77098

Telephone: (713) 489-1206

Facsimile: (713) 893-8370

Attorneys for Plaintiffs

VARSHAD DESAI et al.

VS.

STATE FARM LLOYDS INC CIVIL PROCESS REQUEST FORM

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: 1064068 CURRENT COURT: CCCL 4TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): Original PetitionFILE DATE OF MOTION: 6/23/2015
Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: State Farm Lloyds, IncADDRESS: 211 E. 7th Street, Suite 620, Austin, Texas 78701AGENT, (if applicable): Registered Agent: Corporation Service Company d/b/a CSC Lawyers Inc.

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): _____

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____
☐ MAIL ☒ CERTIFIED MAIL
☐ PUBLICATION:
Type of Publication: ☐ COURTHOUSE DOOR, or
☐ NEWSPAPER OF YOUR CHOICE: _____
☐ OTHER, explain _____

ATTENTION: Effective June 1, 2010

For all Services Provided by the DISTRICT CLERKS OFFICE requiring our office to MAIL something back to the
Requesting Party, we require that the Requesting Party provide a Self-Addressed Stamped Envelope with sufficient postage
for mail back. Thanks you,

2. NAME: _____

ADDRESS: _____

AGENT, (if applicable): _____

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): _____

SERVICE BY (check one):

- ☐ ATTORNEY PICK-UP ☐ CONSTABLE
☐ CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____
☐ MAIL ☐ CERTIFIED MAIL
☐ PUBLICATION:
Type of Publication: ☐ COURTHOUSE DOOR, or
☐ NEWSPAPER OF YOUR CHOICE: _____
☐ OTHER, explain _____

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: John Sheppard TEXAS BAR NO./ID NO. 24051331MAILING ADDRESS: 3701 Kirby Drive, Suite 840, Houston, Texas 77098PHONE NUMBER: 713 489-1206 FAX NUMBER: 713 893-8370
area code phone number area code fax numberEMAIL ADDRESS: jsheppard@morrowsheppard.com

SERVICE REQUESTS WHICH CANNOT BE PROCESSED BY THIS OFFICE WILL BE HELD FOR 30 DAYS PRIOR TO CANCELLATION. FEES WILL BE REFUNDED ONLY UPON REQUEST, OR AT THE DISPOSITION OF THE CASE. SERVICE REQUESTS MAY BE REINSTATED UPON APPROPRIATE ACTION BY THE PARTIES.

INSTRUMENTS TO BE SERVED:

(Fill In Instrument Sequence Number, i.e. 1st, 2nd, etc.)

ORIGINAL PETITION

_____ AMENDED PETITION

_____ SUPPLEMENTAL PETITION

COUNTERCLAIM

_____ AMENDED COUNTERCLAIM

_____ SUPPLEMENTAL COUNTERCLAIM

CROSS-ACTION:

_____ AMENDED CROSS-ACTION

_____ SUPPLEMENTAL CROSS-ACTION

THIRD-PARTY PETITION:

_____ AMENDED THIRD-PARTY PETITION

_____ SUPPLEMENTAL THIRD-PARTY PETITION

INTERVENTION:

_____ AMENDED INTERVENTION

_____ SUPPLEMENTAL INTERVENTION

INTERPLEADER

_____ AMENDED INTERPLEADER

_____ SUPPLEMENTAL INTERPLEADER

INJUNCTION

MOTION TO MODIFY

SHOW CAUSE ORDER

TEMPORARY RESTRAINING ORDER

BILL OF DISCOVERY:

ORDER TO: _____
(specify)

MOTION TO: _____
(specify)

PROCESS TYPES:

NON WRIT:

CITATION

ALIAS CITATION

PLURIES CITATION

SECRETARY OF STATE CITATION

COMMISSIONER OF INSURANCE

HIGHWAY COMMISSIONER

CITATION BY PUBLICATION

NOTICE

SHORT FORM NOTICE

PRECEPT (SHOW CAUSE)

RULE 106 SERVICE

SUBPOENA

WRITS:

ATTACHMENT (PROPERTY)

ATTACHMENT (WITNESS)

ATTACHMENT (PERSON)

CERTIORARI

EXECUTION

EXECUTION AND ORDER OF SALE

GARNISHMENT BEFORE JUDGMENT

GARNISHMENT AFTER JUDGMENT

HABEAS CORPUS

INJUNCTION

TEMPORARY RESTRAINING ORDER

PROTECTIVE ORDER (FAMILY CODE)

PROTECTIVE ORDER (CIVIL CODE)

POSSESSION (PERSON)

POSSESSION (PROPERTY)

SCIRE FACIAS

SEQUESTRATION

SUPERSEDEAS



STAN STANART

COUNTY CLERK, HARRIS COUNTY
POST OFFICE BOX 1525
HOUSTON, TEXAS 77251-1525

CERTIFIED MAIL™



7009 2820 0001 7461 4249

08/24/2015

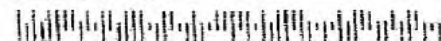
9:41 AM
9-11-15000174

TO:

RETURN POSTAGE GUARANTEED

STATE FARM LLOYDS, INC.
C/O CORPORATION SERVICE COMPANY
D/B/A CSC LAWYERS INC.,
211 E. 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701
BY DELIVERY TO ADDRESSEE ONLY

RECEIPT REQUESTED





CORPORATION SERVICE COMPANY™

Notice of Service of Process

Transmittal Number: 13972720
Date Processed: 07/02/2015

Primary Contact: State Farm Enterprise SOP
Corporation Service Company- Wilmington, DELAWARE
2711 Centerville Road
Wilmington, DE 19808

Entity:	State Farm Lloyds, Inc. Entity ID Number 3464317
Entity Served:	State Farm Lloyds, Inc.
Title of Action:	Varshad Desai vs. State Farm Lloyds, Inc
Document(s) Type:	Summons/Complaint
Nature of Action:	Contract
Court/Agency:	Harris County Civil Court, Texas
Case/Reference No:	1064068
Jurisdiction Served:	Texas
Date Served on CSC:	07/02/2015
Answer or Appearance Due:	10:00 am Monday next following the expiration of 20 days after service
Originally Served On:	CSC
How Served:	Certified Mail
Sender Information:	John D. Sheppard 713-489-1206

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com



STAN STANART
COUNTY CLERK, HARRIS COUNTY, TEXAS
COUNTY CIVIL COURTS DEPARTMENT

Docket Number: 1064068

Receipt Number: OOC

No Sheriff/Constable Fee Collected

VARSHAD DESAI AND AMRISH PATEL

Plaintiff

VS.

STATE FARM LLOYDS, INC

Defendant

In The County Civil Court at Law No. Four (4)

201 Caroline / Suite 540

Houston, Harris County, Texas 77002

7009 2820 0001 7461 4249

THE STATE OF TEXAS
ORIGINAL PETITION – DISCLOSURES CITATION
BY CERTIFIED MAIL THROUGH THE COUNTY CLERK

TO: State Farm Lloyds, Inc.
served through its registered agent Corporation Service Company d/b/a CSC Lawyers Inc.,
211 E. 7th Street, Suite 620
Austin, Texas 78701

By Certified Mail, Return Receipt Requested

Attached is a copy of petition with discovery attached.

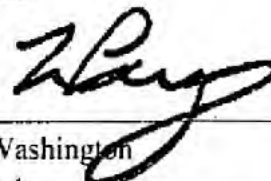
This instrument was filed on the **23rd** day of **June, 2015** in the above cited cause number and court. The instrument attached describes the claim against you.

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the county clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Issued and given under my hand and the seal of said court, at Houston, Texas, on this 29th day of June, 2015.

(SEAL)

STAN STANART, County Clerk
County Civil Court at Law No. Four (4)
201 Caroline, Suite 300
Harris County, Texas


Terrence Latrelle Washington
Deputy County Clerk

REQUESTED BY: JOHNDENIS SHEPPARD

3701 KIRBY DR, STE 840
HOUSTON, TEXAS 77098

OFFICER'S RETURN

Came to hand on _____, at _____ o'clock ____ M. and

executed in _____ County, Texas, by delivering to each of the within named Defendants, in person, a true copy of this Citation together with the accompanying copy of the Plaintiff's petition, at the following time and places to-wit:

NAME	DATE			TIME	PLACE OR ADDRESS OF SERVICE
	Month	Day	Year	Hour / Min. - AM/PM	

and not executed as to the Defendant _____

the diligence used in finding said Defendant, being _____

and the cause of failure to execute this process is: _____

and the information received as to the whereabouts of the said Defendant, being: _____

_____, (Sheriff)

(Authorized Person) _____ (Constable)

Sworn to and subscribed before me this _____ day _____ County, Texas

of _____

By _____, Deputy

(Notary Public)

RETURN FOR NOTICE TO SERVE NON-RESIDENT DEFENDANT

STATE OF _____ §

COUNTY OF _____ §

Before me, the undersigned authority, personally appeared _____,

a person competent to make oath, and who by me being duly sworn, deposes and says; that this notice came to hand on _____

_____, at _____ o'clock A.M./P.M., and executed by delivering

to defendant, _____, in person, at _____

in _____, County _____, State of _____

_____, on _____, at _____ o'clock

A.M./P.M., a true copy of the notice, with a copy of plaintiff's petition attached thereto. He further says that he is in no manner interested in this Suit.

Sworn to and subscribed before me,

_____, (Sheriff)

_____, (Constable)

_____, County,

State of _____

By _____, Deputy

NO. 1064068

VARSHAD DESAI AND AMRISH PATEL	§	
	§	
Plaintiffs,	§	
	§	
v.	§	IN THE HARRIS COUNTY
	§	CIVIL COURT OF LAW # 4
	§	
STATE FARM LLOYDS, INC AND	§	
STATE FARM LLOYDS	§	
	§	
Defendant		

**PLAINTIFF'S FIRST AMENDED PETITION,
REQUEST FOR DISCLOSURE, AND JURY DEMAND**

Plaintiffs files this Original Petition, Request for Disclosure, and Jury Demand against the above named Defendants, and would respectfully show the Court as follows:

I. JURISDICTION & VENUE

1. Venue and jurisdiction are proper in this Court because Defendants are residents of Texas, because this cause of action involves a controversy within the jurisdictional limits of this Court, and because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas. Plaintiffs seek damages within the jurisdictional limits of this Court. Pursuant to Texas Rule of Civil Procedure Rule 47(c), Plaintiffs seek monetary relief of over \$100,000 and under \$200,000.

II. DISCOVERY LEVEL

2. Discovery may be conducted under Level 2 of the Texas Rules of Civil Procedure.

III. PARTIES

3. Plaintiffs are residents of Texas.

4. Defendant State Farm Lloyds, Inc. is a resident of Texas and may be served through its registered agent Corporation Service Company d/b/a CSC Lawyers Inc., 211 E. 7th Street, Suite 620, Austin, Texas 78701.

5. Defendant State Farm Lloyds is a resident of Texas and may be served through its registered agent Corporation Service Company d/b/a CSC Lawyers Inc., 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

IV. FACTS

6. Plaintiffs are named insureds under an insurance policy issued by Defendants covering their property and business located at 3 Riverway Suite B1, Houston, Texas 77056, which is operated as a Murphy's Deli in the Galleria.

7. On or about May 25, 2015 and May 26, 2015, Plaintiffs' business and property suffered covered damage and losses covered by their insurance policy, and they filed a claim on their policy.

8. Defendants improperly denied the claim. The claim should be paid in full.

9. The adjuster assigned to the claim conducted a substandard investigation and inspection of the property and loss, and performed an outcome-oriented investigation of the claim, which resulted in a biased, unfair, and inequitable evaluation of Plaintiffs' losses and denial of Plaintiffs' claim.

V. CAUSE OF ACTION – BREACH OF CONTRACT

10. Each of the foregoing paragraphs are incorporated by reference herein.

11. Plaintiffs had a contract of insurance with Defendants. Defendants breached the terms of that contract by wrongfully denying the claim and Plaintiffs were proximately damaged thereby.

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12. Plaintiffs are entitled to reasonable and necessary attorneys fees pursuant to Texas Civil Practices and Remedies Code 38.001-38.003.

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13. All conditions precedent have been performed or have occurred, or have been waived by Defendants.

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14. Plaintiffs request that Defendants timely disclose the information and materials required by Texas Rule of Civil Procedure 194.2(a)-(l).

IX. RESERVATION OF RIGHTS

15. These allegations are made acknowledging that this lawsuit is still in its early stages, and investigation, although undertaken, is continuing. As further investigation is conducted, additional facts will surely be uncovered that may and probably will necessitate further, additional, and/or different allegations.

X. JURY DEMAND

16. Plaintiffs request a jury trial. Tex. R. Civ. P. 216(a).

XI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that Defendants be cited to appear and answer, and that on final trial hereof Plaintiffs have judgment against Defendant for (1) actual and compensatory damages, (2) prejudgment and postjudgment interest, (4) costs of suit, (5) attorneys fees, (6) such other and further relief to which Plaintiffs may be justly entitled at law and in equity.

MORROW & SHEPPARD LLP

/s/ John D. Sheppard

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Attorneys for Plaintiffs

NO. 1064068

VARSHAD DESAI AND AMRISH PATEL	§	
	§	
Plaintiffs,	§	
	§	
v.	§	IN THE HARRIS COUNTY
	§	CIVIL COURT OF LAW # 4
STATE FARM LLOYDS	§	
	§	
Defendant	§	

**PLAINTIFF'S SECOND AMENDED PETITION,
REQUEST FOR DISCLOSURE, AND JURY DEMAND**

Plaintiffs files this Amended Petition, Request for Disclosure, and Jury Demand against the above named Defendant, and would respectfully show the Court as follows:

I. JURISDICTION & VENUE

1. Venue and jurisdiction are proper in this Court because Defendant is a resident of Texas, because this cause of action involves a controversy within the jurisdictional limits of this Court, and because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas. Plaintiffs seek damages within the jurisdictional limits of this Court. Pursuant to Texas Rule of Civil Procedure Rule 47(c), Plaintiffs seek monetary relief of over \$100,000 and under \$200,000.

II. DISCOVERY LEVEL

2. Discovery may be conducted under Level 2 of the Texas Rules of Civil Procedure.

III. PARTIES

3. Plaintiffs are residents of Texas.

4. Defendant State Farm Lloyds is a resident of Texas and may be served through its registered agent Corporation Service Company d/b/a CSC Lawyers Inc., 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218. Counsel for Defendant has already accepted service.

IV. FACTS

5. Plaintiffs are named insureds under an insurance policy issued by Defendant covering their property and business located at 3 Riverway Suite B1, Houston, Texas 77056, which is operated as a Murphy's Deli in the Galleria.

6. On or about May 25, 2015 and May 26, 2015, Plaintiffs' business and property suffered covered damage and losses covered by their insurance policy, and they filed a claim on their policy.

7. Defendant improperly denied the claim. The claim should be paid in full.

8. The adjuster assigned to the claim conducted a substandard investigation and inspection of the property and loss, and performed an outcome-oriented investigation of the claim, which resulted in a biased, unfair, and inequitable evaluation of Plaintiffs' losses and denial of Plaintiffs' claim.

V. CAUSE OF ACTION – BREACH OF CONTRACT

9. Each of the foregoing paragraphs are incorporated by reference herein.

10. Plaintiffs had a contract of insurance with Defendant. Defendant breached the terms of that contract by wrongfully denying the claim and Plaintiffs were proximately damaged thereby.

VI. ATTORNEYS FEES

11. Plaintiffs are entitled to reasonable and necessary attorneys fees pursuant to Texas Civil Practices and Remedies Code 38.001-38.003.

VII. CONDITIONS PRECEDENT

12. All conditions precedent have been performed or have occurred, or have been waived by Defendant.

VIII. REQUEST FOR DISCLOSURE

13. Plaintiffs request that Defendant timely disclose the information and materials required by Texas Rule of Civil Procedure 194.2(a)-(l).

IX. RESERVATION OF RIGHTS

14. These allegations are made acknowledging that this lawsuit is still in its early stages, and investigation, although undertaken, is continuing. As further investigation is conducted, additional facts will surely be uncovered that may and probably will necessitate further, additional, and/or different allegations.

X. JURY DEMAND

15. Plaintiffs request a jury trial. Tex. R. Civ. P. 216(a).

XI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that Defendant be cited to appear and answer, and that on final trial hereof Plaintiffs have judgment against Defendant for (1) actual and compensatory damages, (2) prejudgment and postjudgment interest, (4) costs of suit, (5) attorneys fees, (6) such other and further relief to which Plaintiffs may be justly entitled at law and in equity.

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/s/ John D. Sheppard

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Attorneys for Plaintiffs

CAUSE NO. 1064068**VARSHAD DESAI AND
AMRISH PATEL****VS.****STATE FARM LLOYDS**§
§
§
§
§
§**IN THE HARRIS COUNTY
CIVIL COURT OF LAW NO. 4****DEFENDANT'S ANSWER TO PLAINTIFFS' SECOND AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant State Farm Lloyds files this Answer to Plaintiffs' Second Amended Petition, and all subsequent amended or supplemented petitions filed against Defendant, and shows as follows:

**I.
GENERAL DENIAL**

1. Defendant generally denies all of the material allegations contained in Plaintiffs' Second Amended Petition and any amendments and supplements thereto and demands strict proof thereof as allowed under the laws of the State of Texas. By this general denial, Defendant would require Plaintiffs to prove every fact to support the claims in Plaintiffs' Second Amended Petition and any amendments and supplements thereto by a preponderance of the evidence.

**II.
DEFENSES**

2. **Policy Coverage Provisions.** Under the policy made the basis of this suit, Plaintiffs have the burden to prove damage(s) resulting from an occurrence of accidental direct physical loss to the insured property during the policy period. To the extent applicable, Plaintiffs lack proof that any additional damages resulted from any accidental direct physical loss during the policy period. Defendant would further show that, to the extent applicable, it has fully complied with all provisions, terms, and conditions set forth in the policy.

3. Payment. Defendant is entitled to an offset or credit against Plaintiffs' damages, if any, in the amount of all payments Defendant has made to or on behalf of Plaintiffs under the policy in connection with the damages and the insurance claim made the basis of Plaintiffs' claims in this lawsuit.

4. Deductible/Offset. Defendant is entitled to an offset or credit against Plaintiffs' damages, if any, in the amount of Plaintiffs' deductible.

5. Limit of Liability. Defendant's liability, if any, is limited to the amount of the policy limits under the subject policy pursuant to the "Limit of Liability," "Limits of Insurance," and other similar provisions contained in the policy made the basis of this suit.

6. Failure of Policy Conditions/Conditions Precedent. Defendant hereby references all conditions of the policy at issue, including, but not limited to, all terms, deductibles, limitations on coverage, exclusions set out in the Policy, and all "duties in the event of loss." To the extent applicable and by way of example only, Defendant would show that Plaintiffs have failed to satisfy one or more conditions of the policy as set forth in **SECTION I – CONDITIONS; c. Duties in the Event of Loss.**

7. Pre and Post-Existing Damages. Plaintiffs' claims are barred, in whole or in part, because the damages and losses alleged in Plaintiffs' Second Amended Petition, none being admitted, pre-existed and/or occurred subsequent to the alleged incident of loss.

8. Water Damage. Defendant would further show that the policy made the basis of this suit contains terms and conditions expressly excluding the coverage sought by Plaintiffs. By way of example only, Plaintiffs' claims are barred, in whole or in part, because the damages and losses alleged in Plaintiffs' Second Amended Petition, none being admitted, were proximately caused, in whole or in part, by water damage. The policy at issue specifically provides:

SECTION I – EXCLUSIONS

1. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other cause of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural forces, or occurs

* * * * *

h. **Water**

- (1) Flood, surface water, waves (including tidal waves, tsunami, and seiche), tides, tidal water, overflow of any body of water, or spray or surge from any of these, all whether driven by wind or not;

9. Chapter 38 Attorney's Fees. Plaintiffs cannot recover attorney's fees from Defendant under Chapter 38 of the Texas Civil Practice and Remedies Code. "A person may recover reasonable attorney's fees from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for . . . (8) an oral or written contract." TEX. CIV. PRAC. & REM. CODE § 38.001(8). Chapter 38 does not apply to Defendant because it is an unincorporated association of underwriters. *See Fleming & Assocs., L.L.P. v. Barton*, 425 S.W.3d 560, 575 (Tex. App.—Houston [14th Dist.] 2014, pet. filed).

III. SPECIAL EXCEPTIONS

10. Failure to Set Forth Specific Claims/Facts – Breach of Contract. Defendant specially excepts to Plaintiffs' Second Amended Petition because the vague and indefinite breach of contract claim fails to provide fair notice of: (1) the facts of the loss or losses allegedly sustained by Plaintiffs; (2) the facts showing Plaintiffs' alleged loss or losses were covered under the terms of the policy at issue; and (3) the acts and/or omissions by Defendant which allegedly

amounted to a breach of Defendant's contractual obligations, if any, to Plaintiffs. *Subia v. Texas Dep't of Human Serv.*, 750 S.W.2d 827, 829 (Tex. App. — El Paso 1988, no writ) (trial court can order the plaintiffs to specifically plead a cause of action which was originally pleaded in general terms). Accordingly, Plaintiffs should be required to amend their claim for breach of contract and state with particularity: (1) facts supporting the alleged loss; (2) facts demonstrating the portion of the loss covered by the policy in question; (3) facts of the acts and/or omissions by Defendant which allegedly amounted to a breach of contractual obligation to Plaintiffs; and (4) the maximum amount of damages sought by Plaintiffs for Defendant's alleged breach of contract.

11. Failure to Identify the Date the Breach of Contract Occurred. Defendant specially excepts to Plaintiffs' Second Amended Petition in its entirety because it is impermissibly vague in that it fails to set forth the date the alleged breach of contract occurred. Therefore, Plaintiffs should be required to file an amended pleading setting forth the date the alleged breach of contract occurred.


12. Failure to Set Forth Specific Claims/Facts – Plaintiffs' Claim for Attorney's Fees for Breach of Contract. Defendant specially excepts to Plaintiffs' Second Amended Petition because Plaintiffs failed to provide sufficient notice of facts, sufficient demand or the amount of attorney's fees incurred for the purpose of satisfying the requirements of TEX. CIV. PRAC. & REM. CODE Chapter 38.

For these reasons, Defendant respectfully requests the Court sustain Defendant's special exceptions to Plaintiffs' Second Amended Petition. Defendant further requests that, upon final trial and hearing hereof, Plaintiffs take nothing and that Defendant recover its costs, fees, and

expenses. Defendant additionally prays for such other further relief to which Defendant may show itself to be justly entitled, both in law and at equity.

Respectfully submitted,

GERMER PLLC

By: 

DALE M. "RETT" HOLIDY

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on all counsel of record on this 7th day of August, 2015.

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Nicholas A. Morrow

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VIA E-SERVICE



DALE M. "RETT" HOLIDY

GREGORY HOWARD

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Case # 1064068 - VARSHAD DESAI et al VS STATE FARM LLOYDS INC (CCCL 4)

Case Information

Location	Harris County Clerk - Civil
Date Filed	08/07/2015 02:43:10 PM
Case Number	1064068
Case Description	VARSHAD DESAI et al VS STATE FARM LLOYDS INC
Assigned to Judge	CCCL 4
Attorney	Dale Holiday
Firm Name	Germer PLLC
Filed By	Erika Lopez
Filer Type	Not Applicable

Fees

Convenience Fee	\$0.06
Total Court Case Fees	\$0.00
Total Court Filing Fees	\$0.00
Total Court Service Fees	\$2.00
Total Filing & Service Fees	\$0.00
Total Service Tax Fees	\$0.00
Total Provider Service Fees	\$0.00
Total Provider Tax Fees	\$0.00
Grand Total	\$2.06

Payment

Account Name	File & ServeXpress Monthly Bill
Transaction Amount	\$2.06
Transaction Response	Approved
Transaction ID	10526600
Order #	006407627-0

Answer/Response

Filing Type	EFileAndServe
Filing Code	Answer/Response
Filing Description	Defendant's Answer to Plaintiffs' Second Amended Petition
Reference Number	88461
Comments	
Status	Accepted

Accepted Date 08/10/2015 11:13:43 AM

Fees

Court Fee \$0.00

Service Fee \$0.00

Documents

Lead Document DESAI - [\[Original\]](#) [\[Transmitted\]](#)
SF_AnsW_to_Pl_s_2nd_Amend_Pet.pdf

eService Details

Name/Email	Firm	Service Type	Status	Served	Date/Time Opened
John Sheppard jsheppard@morrowsheppard.com	Morrow & Sheppard LLP	EServe	Sent	Yes	Not Opened
Nicholas Morrow nmorrow@morrowsheppard.com		EServe	Sent	Yes	Not Opened

Case	Crt	Date Opened	Commenced By	Status	Nature	Style	View All
1064068	4	06/23/2015	Petition	Open	Consumer/Commercial/Debt	VARSHAD DESAI et al. VS. STATE FARM LLOYDS INC	Parties

Case	File Date	Event	Comments	Pgs	Document ID	
1064068	06/23/2015 09:19 AM	Case Initiated - Petition		7	CCCL-2015-213435	
1064068	06/23/2015 11:52 AM	Civil Case Information Sheet		2	CCCL-2015-213449	
1064068		Electronic Filing Fee		0		

<u>Case</u>	<u>File Date</u>	<u>Event</u>	<u>Comments</u>	<u>Pgs</u>	<u>Document ID</u>	
	06/24/2015 11:51 AM		CERTIFIED MAIL ONLY			
1064068	06/24/2015 11:51 AM	E-Filing Copies		0		
1064068	06/24/2015 11:52 AM	Jury Fee		0		
1064068	06/24/2015 02:46 PM	Receipt# 1057014 generated for the amount of \$ 322.25		0		
1064068	06/25/2015 09:10 AM	Citation to Be Issued		1	CCCL-2015- 216454	
1064068	06/25/2015 09:12 AM	Electronic Filing Fee		0		
1064068	06/25/2015 12:45 PM	Crt 4-Order for Trial Setting-Jury		2	CCCL-2015- 215401	
1064068	06/26/2015 01:54 PM	Receipt# 1057774 generated for the amount of \$ 6.00		0		
1064068	06/29/2015 01:49 PM	Original Petition Citation - DISC	BY CERTIFIED MAIL	2	CCCL-2015- 219010	
1064068	07/24/2015 09:58 AM	Rule 11		1	CCCL-2015- 255135	
1064068	07/24/2015 03:30 PM	Citation Returned	SERVED 07- 02-15 BY CERTIFIED MAIL APPEARANCE DATE 07-27- 15	4	CCCL-2015- 252453	
1064068	07/27/2015 02:10 PM	Receipt# 1065700 generated for the amount of \$ 2.00		0		
1064068	07/28/2015 11:56 AM	Crt 4-Order for Trial Setting-Jury		2	CCCL-2015- 255606	
1064068	07/29/2015 11:36 AM	Amended Petition	PLAINTIFF'S FIRST AMENDED PETITION, REQUEST FOR DISCLOSURE, AND JURY DEMAND	4	CCCL-2015- 259266	
1064068	07/30/2015 10:29 AM	Receipt# 1066738 generated for the amount of \$ 2.00		0		
1064068	08/03/2015 02:39 PM	Receipt# 1067854 generated for the amount of \$ 2.00		0		
1064068		Rule 11		1		

<u>Case</u>	<u>File Date</u>	<u>Event</u>	<u>Comments</u>	<u>Pgs</u>	<u>Document ID</u>	
	08/03/2015 02:49 PM				CCCL-2015-262851	
1064068	08/04/2015 07:56 AM	Amended Petition	PLAINTIFF'S SECOND AMENDED PETITION REQUEST FOR DISCLOSURE AND JURY DEMAND	4	CCCL-2015-264883	
1064068	08/04/2015 03:39 PM	Receipt# 1068215 generated for the amount of \$ 2.00		0		
1064068	08/07/2015 01:21 PM	Answer	DEFENDANT STATE FARM LLOYDS ANSWER TO PLAINTIFFS' SECOND AMENDED PETITION	5	CCCL-2015-270546	
1064068	08/10/2015 01:03 PM	Receipt# 1069468 generated for the amount of \$ 2.00		0		
1064068	08/19/2015 11:33 AM	Crt 4-Order for Trial Setting-Jury		2	CCCL-2015-281784	